IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD
(Special Original Jurisdiction)

FRIDAY, THE ELEVENTH DAY OF FEBRUARY
TWO THOUSAND AND FIVE

PRESENT
THE HON'BLE MR JUSTICE K.C. BHANU

W.P.NOS. 952 AND 1564 OF 2005

1) WRIT PETITION NO : 952 of 2005

Between:

1. M/s Coastal Engineering Constructions,
   Plot No, 45/A, Santhosh Nagar Colony,
   Mehadipatnam, Hyderabad, Rep. by its
   Managing Partner, K. Subba Raju.

2. M/s Sai Constructions, Ubalanka, Ravulapalem
   Mandal, East Godavari District, Rep. by its
   Managing Partner, Satthi Baba Prasad Reddy.

3. Ch. Satyanarayana Raju, Contractor, S/o Subba Raju,
Contractor Ubalanka, Ravulapalem Mandal, East Godavari District.

4. M.V. Satyanarayana Raju, S/o Chinna Appala Raju,
   Ubalanka, Ravulapalem Mandal, East Godavari District.

.... PETITIONERS

AND

1. The Government of Andhra Pradesh,
   rep. by the Secretary, Transport,
   Roads & Buildings Department, Secretariat,
   Hyderabad.

2. The Superintending Engineer, Roads &

Buildings Department, Eluru,
West Godavari District.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue writ or direction particularly in the nature of mandamus or any other appropriate writ, directing the 2nd respondent in not accepting the tender applications of the petitioners submitted pursuant to the tender notification No. 8/HD/(2)/2004-2005, dated 7-1-2005 on the file of the 2nd respondent, without insisting the Plant Certificates issued by the concerned Executive Engineer, in terms of G.O.Ms.No. 46, dated 17-1-2005 issued by the 1st respondent.

Counsel for the Petitioners: MR.V.R.AVULA

Counsel for the Respondents: GP FOR ROADS & BUILDINGS

2) WRIT PETITION NO : 1564 of 2005

Between:

1. The Velcheru Harijan Labour Contract Cooperative Society Ltd.,
   Velcheru, Atreyapuram Mandal, E.G.District,
   rep.by its president-I, Chanti Babu.
2. D.Bhima Raju, S/o.Surapa Raju,
   R/o.Ubalanka, Ravulapalem Mandal.
3. G.Anjaneya Reddy, S/o.Papi Reddy,
   R/o.Ravulapalem E.G.District.
4. K.Srinivasa Reddy, S/o.Veerareddy,
   R/o.Vedireswaram, Ravulapalem Mandal,
5. P.Satyanarayana Reddy, S/o.Atchi Reddy,
   R/o.Ubalanka, Ravulapalem Mandal.

.... PETITIONERS

AND

1. The Government of Andhra Pradesh, rep.by its Secretary,
   Transport Road & Buildings(R.I) Dept., Secretariat,
   Hyderabad.
2. The Engineer in Chief (R&B) Administration & NABARD,
   Erramanzil, Hyderabad.
3. The Superintending Engineer, R&B Circle, Eluru,
   West Godavari District.

....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction more particularly one in the nature of writ of Mandamus declaring the action of the 3rd respondent in not extending the benefits conferred by the 1st respondent Government to the contractors under G.O.Rt.No. 46T, R&B Dept., dated: 17-01-2005 in the tender notice issued by him bearing No.8/H.D/2004-05/dt.07-01-2005 as illegal, arbitrary and unjust and consequently direct the 3rd respondent to issue a fresh tender notice by canceling the present tender notice, dt.07-01-2005 to enable all the eligible contractors to participate in the bidding.

Counsel for the Petitioners: MR.N.SIVA REDDY

Counsel for the Respondents.: GP FOR ROADS & BUILDINGS

The Court at the admission stage made the following:

COMMON ORDER:

Since the question involved in both the Writ Petitions is one and the same, they are being disposed of by this common order.

2. These Writ Petitions are filed to issue a Writ of *Mandamus* to direct the Superintending Engineer, Roads and Buildings Department, Eluru (hereinafter referred to as 'Superintending Engineer') to accept the tender applications of the petitioners submitted pursuant to the tender notification No.8/HD/(2)/2004-2005, dated 07.01.2005 on the file of Superintending Engineer, without insisting the plant certificates issued by the concerned Executive Engineer, in terms of G.O.Rt.No.46 dated 17.01.2005.

3. The brief facts that are necessary for disposal of the present Writ Petitions may be stated as follows:

4. The petitioners 1 and 2 in W.P. No. 952 of 2005 and the petitioner No.1 in W.P. No.1654 of 2005 are the registered partnership firms

engaged in construction activity, where as the petitioners 3 and 4 in W.P. No.952 of 2005 and petitioners 2 to 5 in W.P.No.1564 of 2005 are individual contractors. The Superintending Engineer *vide* tender notice No.8/HD/(2)/2004-2005, dated 07.01.2005, called tenders for certain special repairs to the roads stipulated therein. Since the petitioners are eligible to participate in the works as notified in the tender notification, they submitted tenders for certain works. Though, the notification, dated 07.01.2005, was issued by the Superintending Engineer, *vide* G.O.Rt.No.46, dated 17.01.2005, the Government of A.P., represented by the Secretary, Transport, Roads and Buildings Department (hereinafter referred to as 'Secretary'), accorded permission to make the following changes in the bid document:

> *"i) The ownership/lease of Hot Mix Plant, shall be deleted in the tender condition.*
>
> *ii) The contractor shall procure the hot mix material to the work site, duly maintaining the required laying temperature as per the specification."*

Even after issuance of the amendment to the said G.O., the respondents are insisting to submit the above said two documents along with tender applications. The petitioners approached Superintending Engineer, on 25.01.2005, along with the tender applications and offered the same, but the Superintending Engineer orally refused to receive the same and insisted for plant certificate issued by the Executive Engineer, in spite of bringing G.O.Rt.No.46, dated 17.01.2005, to his notice, which dispensed with the plant certificate. Hence, the present Writ Petitions are filed.

5. Learned counsel for the petitioners vehemently contended that in pursuance of the G.O.Rt.No.46, dated 17.01.2005, there is no need for the petitioners to submit the ownership/lease of hot mix plant and bring the hot mix material to the work site, in view of the change in the bid document and that it is not pre-requisite condition for submitting the tender notification dated 27-01.2005, and when the petitioners intend to submit the tender application dated 26.01.2005, the Superintending Engineer refused to receive the same, on the ground that tender application is not accompanied by plant certificate issued by the concerned Executive Engineer. Therefore, the action of the Superintending Engineer is clearly arbitrary and hence, it is not proper to refuse the tender applications.

6. On the other hand, the learned Government Pleader for Transport and Buildings contended that as per the notice inviting tender, it is pre-requisite for the tenderers to file a plant certificate issued by the concerned Executive Engineer and that the subsequent G.O. has no application.

7. Learned counsel appearing on behalf of the Superintending Engineer contended that the Superintending Engineer is bound by the terms and conditions in the notice inviting tender, dated 07.01.2005, and the conditions as notified in the tender have to be followed scrupulously and therefore, the documents as required under notice inviting tender cannot be dispensed with. Hence, he prays to dismiss the Writ Petition.

8. The Superintending Engineer issued a notice inviting tenders, dated 07.01.2005, for carrying out special repairs to Tettali – Munipalli Road from KM 13.00 to15.450 (HMP). The last date of schedule is 27.01.2005. A specific condition has incorporated in this NIT, which reads as follows:

> *(f) Tenderers who are having Hot mix plant with in a distance of 70KMs. From the work site are only eligible for endering.*
> *(II) The tenderer should produce a certificate from the concerned Executive Engineer (R&B) of the jurisdiction regarding location of plant.*

Therefore, the above conditions clearly indicate that the tenderers who possess a hot mix plant within a distance of 70 Kms. from the work site are only eligible for submitting tenders. For that purpose the tenderer should produce a certificate from the concerned Executive Engineer (R&B) having jurisdiction, regarding the location of the plant. This is one of the eligibility criteria as prescribed in the NIT. But the counsel for the petitioners placed a strong reliance on the G.O.Rt.No.46 Transport Roads and Buildings (R.I) Department, dated 17.01.2005, where under, the Government accorded permission to make the changes in the bid document extracted above.

9. Therefore, the Government of Andhra Pradesh directed the Engineer in Chief (R&B) Administration and NABARD to take further action accordingly. The aforesaid G.O. does not indicate that it will have retrospective effect. There is no indication that the changes in the G.O are applicable to the notice inviting tender dated 07.01.2005.

10. Therefore, in my considered opinion, the said G.O.Rt.No.46 is

prospective, and not applicable for the tenders already called for. Further the learned counsel for the petitioners placed reliance on the following Judgments reported in **U.P.PUBLIC SERVICE COMISSION v ALPANA(S.C.)**[1] wherein it is held that:

> *"As already pointed out, on a plain reading of the advertisement pursuant to which she had made the application, it is obvious that she was required to possess the degree of Bachelor of Laws on the last date fixed for receipt of applications which was August 20, 1988. This becomes clear from the requirement of production of an attested copy of the law degree examination certificate and mark-sheet thereof."*

Basing on the above decision the learned counsel contended that since the last date of application is 27.01.2005, the Superintending Engineer is bound to accept the tender of the petitioners. But the decision has no application to the facts of the present case. Since the eligibility criteria in this case for making applications is possession of hot mix plant certificate. It is a pre-requisite condition.

11. The learned counsel also relied upon a decision reported in **HARIPAL KAUR CHAHAL(SMT) v DIRECTOR, PUNJAB INSTRUCTIONS, PUNJAB AND ANOTHER**[2]**,** whereunder it was held:

> *"It is to be seen that when the recruitment is sought to be made, the last date has been fixed for receipt of the applications. Such of those candidates who possessed of all the qualifications as on that date alone eligible to apply for and to be considered for recruitment according to the rules."*

12. The above decision has no application to the facts of the

present case since the facts are entirely different inasmuch as there is no pre-requisite condition for receiving applications in the above case. But in this case the pre-requisite conditions are possession of hot mix plant certificate issued by the concerned Executive Engineer.

13. The learned counsel appearing for the Superintending Engineer relied upon a decision reported in **RAMKY INFRASTRUCTURES LTD., v LAKSHMI METAL INDUSTRIES AND CONSTRUCTIONS**[3] wherein it is held that:

> *"Relying on the ratio of the decision of Supreme Court, we are of the view that the respondents are bound by the conditions and the bid conditions ought to have been complied with scrupulously; otherwise non-adherence to the instructions would encourage and provide scope for discrimination, arbitrariness and favouritism, which are totally opposed to rule of law."*

He also relied upon a decision reported in **RAMANA DAYARAM SHETTY v INTERNATIONAL AIRPORT AUTHORITYOF INDIAN**[4] wherein it is held that:

> *"This rule also flows directly from the doctrine of equality embodied in Article 14. It is now well settled as a result of the decisions of this Court in E.P. Royappa V. State of Tamil Nadu and Maneka Gandhi V Union of India that Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. It requires that State action must not be arbitrary but must be based on some rational and relevant principle which is non-discriminatory; it must not be guided by any extraneous or irrelevant considerations, because that would be denial of equality. The principle of reasonableness and rationality which is legally as well as philosophically an essential element of equality or non-arbitrariness is projected by Article 14 and it must*

characterize every State action, whether it be under authority of law or in exercise of executive power without making of law. The State cannot, therefore, act arbitrarily in entering into relationship, contractual or otherwise with a third party, but its action must conform to some standard or norm which is rational and non-discriminatory."

There cannot be any dispute about the preposition of law laid down by their Lordships that the State can choose its own method to arrive at a decision and can fix its own terms of invitation to tender and that it is not open to judicial scrutiny though that decision is amenable to judicial review. The Court can review the decision making process and interfere with the same, if it is vitiated by *malafides,* unreasonableness and arbitrariness. No *malafides* are attributed to the Superintending Engineer in not accepting the tender of the petitioners, so also there is no arbitrariness on the part of the Superintending Engineer inasmuch as the petitioners did not allege in the affidavit that the Superintending Engineer accepted the tenders of other contractors, who have not enclosed the hot mix plant certificate. It is not the case of the petitioners that the Superintending Engineer acted contrary to conditions of NIT, unreasonably. Since the tender conditions have to be followed strictly and it is a pre-requisite condition for the tenderers to produce plant certificate issued by the competent authority, it cannot be relaxed. Though the Government relaxed the said pre-requisite condition through G.O. Rt.No.46 dated 17.12.2005, the same will not apply, since the same is subsequent to the tender notification dated 7.1.12005. Therefore, the Writ Petitions are devoid of merits and thus liable to be dismissed.

14. Accordingly these Writ Petitions are dismissed at the stage of admission.

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11-02-2005

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To

1. The Secretary, The Government of Andhra Pradesh,
   Transport, Roads & Buildings Department, Secretariat,
   Hyderabad.

2. The Superintending Engineer, Roads &

Buildings Department, Eluru,
West Godavari District.

3. The Engineer in Chief (R&B) Administration & NABARD,
Erramanzil,Hyderabad.

4. 2 CCs to G.P. for Roads and Buildings, High Court of AP. Buildings, Hyderabad (OUT)

5. 2 CD copies.

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[1] 1994(4) SLR 59

[2] 1995 SCC (4) 706

[3] 2005(1)ALD (DB) 49

[4] 1979(3) SCC 489